

CHIEF JUDGE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KFORCE INC., a Florida corporation,

Plaintiff,

v.

BRETT OXENHANDLER and the marital
community of Brett and Gina Oxenhandler,
COLLETTE BELL and the marital
community of Collette and Alex Bell, and
VANDERHOUWEN & ASSOCIATES,
INC., an Oregon corporation,

Defendants.

Case No. 2:14-cv-00774 MJP

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve testimony of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER - 1

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2. “CONFIDENTIAL” AND “HIGHLY CONFIDENTIAL” MATERIAL

2.1 “Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: business records and employee files; documents relating to expertise and knowledge in the field of specialty staffing; documents relating to advertising and marketing; Kforce confidential and proprietary information including management communications, compilations, salary information, pricing information, and information related to marketing and promotional strategy; and agreements with employees and non-parties.

2.2 “Highly confidential” material shall include any document, material, or information otherwise meeting the definition of “Confidential,” the disclosure of which to another party or nonparty the disclosing party reasonably believes would likely result in competitive, commercial, financial, or personal harm to the disclosing party or its clients or customers. “Highly confidential” material may include, without limitation, documents relating to clients, applicants, and prospective clients and applicants (including client lists and contact information); financial and budgetary information; and business plans.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a

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1 location and in a secure manner that ensures that access is limited to the persons authorized
2 under this agreement.

3 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
4 ordered by the court or permitted in writing by the designating party, a receiving party may
5 disclose any confidential material only to:

6 (a) the receiving party's counsel of record in this action, as well as employees of
7 counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the
9 receiving party to whom disclosure is reasonably necessary for this litigation;

10 (c) experts and consultants (including computer forensic examiners and
11 custodians) to whom disclosure is reasonably necessary for this
12 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
13 A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the duplication of
16 confidential material, provided that counsel for the party retaining the copy or imaging service
17 instructs the service not to disclose any confidential material to third parties and to immediately
18 return all originals and copies of any confidential material;

19 (f) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
21 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court.
22 Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential
23 material must be separately bound by the court reporter and may not be disclosed to anyone
24 except as permitted under this agreement;

25 (g) the author or recipient of a document containing the information or a
26 custodian or other person who otherwise possessed or knew the information;

27 (h) mediators or discovery masters (and their support staff) assisting in the
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1 above-captioned action; and

2 (i) any other person designated by agreement of the parties and the disclosing
3 party, or by order of the Court.

4 4.3 Disclosure of "HIGHLY CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the designating party, a receiving
6 party may disclose any highly confidential material only to:

7 (a) the receiving party's counsel of record in this action, as well as employees of
8 counsel to whom it is reasonably necessary to disclose the information for this litigation;

9 (b) the following named in-house counsel and paralegal of Kforce, respectively:
10 Jennifer Smayda, Esq. and Tammi Bradford, who are involved in management of the
11 above-captioned action, where such disclosure is reasonably necessary for this litigation and
12 only after the above named in-house counsel and paralegal have signed the "Acknowledgment
13 and Agreement to Be Bound" (Exhibit A);

14 (c) experts and consultants (including computer forensic examiners and
15 custodians) to whom disclosure is reasonably necessary for this
16 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
17 A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;

23 (f) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (g) mediators or discovery masters (and their support staff) assisting in the
26 above-captioned action; and

27 (h) any other person designated by agreement of the parties and the disclosing
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1 party, or by order of the Court.

2 4.3 Filing Confidential or Highly Confidential Material. Before filing confidential
3 or highly confidential material or discussing or referencing such material in court filings, the
4 filing party shall confer with the designating party to determine whether the designating party
5 will remove the confidentiality designation, whether the document can be redacted, or whether
6 a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth
7 the procedures that must be followed and the standards that will be applied when a party seeks
8 permission from the court to file material under seal.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
11 party or non-party that designates information or items for protection under this agreement
12 must take care to limit any such designation to specific material that qualifies under the
13 appropriate standards. The designating party must designate for protection only those parts of
14 material that qualify, so that other portions of the material for which protection is not warranted
15 are not swept unjustifiably within the ambit of this agreement.

16 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
17 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
18 unnecessarily encumber or delay the case development process or to impose unnecessary
19 expenses and burdens on other parties) expose the designating party to sanctions.

20 If it comes to a designating party's attention that information that it designated for
21 protection do not qualify for protection, the designating party must promptly notify all other
22 parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in this
24 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
25 ordered, disclosure or discovery material that qualifies for protection under this agreement must
26 be so clearly designated before or when the material is disclosed or produced.

1 (a) Information in documentary form: (e.g., paper or electronic documents and
 2 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 3 proceedings), the designating party must affix the words “CONFIDENTIAL” or “HIGHLY
 4 CONFIDENTIAL” to each page that contains confidential or highly confidential material. If
 5 only a portion or portions of the material on a page qualifies for protection, the producing party
 6 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 7 margins).

8 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
 9 parties must identify on the record, during the deposition, hearing, or other proceeding, all
 10 protected testimony, without prejudice to their right to so designate other testimony after
 11 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a
 12 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential or
 13 highly confidential.

14 (c) Other tangible items: the producing party must affix in a prominent place on the
 15 exterior of the container or containers in which the information or item is stored the words
 16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” If only a portion or portions of the
 17 information or item warrant protection, the producing party, to the extent practicable, shall
 18 identify the protected portion(s).

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 20 designate qualified information or items does not, standing alone, waive the designating party’s
 21 right to secure protection under this agreement for such material. Upon timely correction of a
 22 designation, the receiving party must make reasonable efforts to ensure that the material is
 23 treated in accordance with the provisions of this agreement.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
 26 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
 27

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 2 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 3 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 4 original designation is disclosed.

5 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 6 regarding confidentiality designations without court involvement. Any motion regarding
 7 confidentiality designations or for a protective order must include a certification, in the motion
 8 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 9 conference with other affected parties in an effort to resolve the dispute without court action.
 10 The certification must list the date, manner, and participants to the conference. A good faith
 11 effort to confer requires a face-to-face meeting or a telephone conference.

12 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 13 intervention, the designating party may file and serve a motion to retain confidentiality under
 14 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 15 persuasion in any such motion shall be on the designating party. Frivolous challenges, and
 16 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
 17 burdens on other parties) may expose the challenging party to sanctions. All parties shall
 18 continue to maintain the material in question as confidential or highly confidential until the
 19 court rules on the challenge.

20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER 21 LITIGATION

22 If a party is served with a subpoena or a court order issued in other litigation that
 23 compels disclosure of any information or items designated in this action as “CONFIDENTIAL”
 24 or “HIGHLY CONFIDENTIAL” that party must:

25 (a) promptly notify the designating party in writing and include a copy of the
 26 subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or order to
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1 issue in the other litigation that some or all of the material covered by the subpoena or order is
2 subject to this agreement. Such notification shall include a copy of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by
4 the designating party whose confidential material may be affected.

5 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
7 confidential or highly confidential material to any person or in any circumstance not authorized
8 under this agreement, the receiving party must immediately (a) notify in writing the designating
9 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies
10 of the protected material, (c) inform the person or persons to whom unauthorized disclosures
11 were made of all the terms of this agreement, and (d) request that such person or persons
12 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit

13 A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
15 MATERIAL

16 When a producing party gives notice to receiving parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
19 provision is not intended to modify whatever procedure may be established in an e-discovery
20 order or agreement that provides for production without prior privilege review. Parties shall
21 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

22 10. NON TERMINATION AND RETURN OF DOCUMENTS

23 Within 60 days after the termination of this action, including all appeals, each receiving
24 party must return all confidential and highly confidential material to the producing party,
25 including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
26 appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
2 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
4 work product, even if such materials contain confidential material. The confidentiality
5 obligations imposed by this agreement shall remain in effect until a designating party agrees
6 otherwise in writing or a court orders otherwise.

7
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9
10 DATED: s/Christopher B. Wells 9/17/2014

11 Attorneys for Plaintiff

12
13
14 DATED: s/Michael D. Williams 9/17/2014

15 Attorneys for Defendants

16
17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18 DATED: 19th of September, 2014

19
20
21 

22 Marsha J. Pechman
23 Chief United States District Judge

24
25
26
27 STIPULATED PROTECTIVE ORDER - 9

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I have
read in its entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Western District of Washington on [date] in the case of Kforce Inc.
v. Brett Oxenhandler, Collette Bell, and Vanderhouwen & Associates, Inc., Case No. 2:14-cv-
00774 MJP. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this Order. I
further agree to submit to the jurisdiction of the United States District Court for the Western
District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington and the United States of America that on the 18th day of September, 2014, the document attached hereto was presented to the Clerk of the Court for filing and uploading to the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to all CM/ECF participants and any non-CM/ECF participants will be served in accordance with the Federal Rules of Civil Procedure.

Attorney for Defendants

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DATED this 18th day of September, 2014, at Seattle, Washington.

s/Christopher B. Wells

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